IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 992 OF 2005
IN
CRIMINAL WRIT PETITION NO.215 OF 2005

Shri D.B. Mane ...Applicant.

V/s

Pritam Ramesh Kalan
and anr. ...Respondents.

Mr. P.R. Naidu with Mr. B.A. Bhandari for the applicant.
Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 20th April, 2005

P.C.:

1. Applicant is the original respondent No.2 in Criminal Writ Petition No.215 of 2005 which is pending in this Court. Criminal Writ Petition No.215 of 2005 was filed by the petitioner - Pritam Ramesh Kalan under section 482 of the Criminal Procedure Code, challenging the order of issuance of process by the Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai on a complaint filed by Shri D.B. Mane under sections 420, 465, 468 of the Indian Penal Code.

2. It is contended by the petitioner in Criminal Writ Petition No. 215 of 2005 that pursuant to the agreement which was executed between the petitioner therein and the members of the Managing Committee, it

was agreed that the petitioner should make certain construction and give certain amenities to the members of the Society. Pursuant to the said agreement, he was carrying on the said construction and had also spent huge amount on the construction after obtaining necessary permission from the B.M.C. Authorities. It is submitted that the complaint which was filed, prima facie, did not disclose commission of any offence and the dispute was of a civil nature. This Court by order dated 1/2/2005 (Coram: A.M. Khanwilkar, J.) was pleased to grant ad-interim relief in terms of prayer clauses (b) and (c). Prayer clauses (b) and (c) read as under:-

> "(b) this Hon'ble Court be further be pleased to release the Petitioner on execution of PR Bond pending the final hearing and disposal of this Petition.
>
> (c) this Hon'ble Court be also pleased to stay the further proceeding in the above said case pending final hearing and disposal of this Petition."

Thereafter, on 25/2/2005, the following order was passed by this Court:-

. "Rule. Returnable on 17th March, 2005. Ld. Counsel appearing on behalf of the respondent waives service. Interim order to continue.

. To be placed for final hearing after admission board is over."

In the meantime, the respondent No.2 in the said petition filed Criminal Application No. 992 of 2005 for cancellation of the bail which was granted by this Court by order dated 1/2/2005.

3. The learned Counsel appearing on behalf of the applicant in this application has invited my attention to the judgment of the Supreme Court in the case of Mandata Singh vs. State of Rajasthan and another, reported in **(2004) 9 SCC 428**. He has submitted that 13 residential members have filed an affidavit to the effect that after the bail was granted by this Court, the respondent No.1 in this application had misused his bail and had created terror in the said area. The learned Counsel also relied on number of other judgments regarding power of the High Court to quash criminal proceedings under Articles 226 and 227 of the

Constitution of India.

4. There cannot be any dispute regarding the ratio laid down by the Supreme Court regarding power of the High Court to quash proceedings under section 482 of the Criminal Procedure Code read with Articles 226 and 227 of the Constitution of India. In the present application, this Court has to see whether the case has been made out by the applicant for cancelling bail which was granted by this Court earlier by order dated 1/2/2005.

5. In my view, no case is made out for cancelling the bail which was granted by this Court. It can be seen that there was an agreement executed between the parties regarding certain construction work which was to be undertaken by the original accused. The respondent No.1 in this application has submitted that he was carrying out the construction work pursuant to the agreement which was executed between the parties and, therefore, by virtue of a valid agreement, he had entered into the premises for the purpose of construction of toilets and certain other construction which was permitted under the agreement. No case is, therefore, made out for cancellation of the bail. It is open for the applicant herein to take appropriate

steps and file appropriate proceedings in civil court and ask for an order of injunction restraining the accused from entering the said premises. However, no such civil suit has been filed till today by the present applicant. Criminal Application No. 992 of 2005 is, therefore, dismissed.

V.M. KANADE, J.